

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

VENTON DALE TALLEY,

Petitioner,

Case No. 96-CR-20063-BC

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER TRANSFERRING SUCCESSIVE MOTION TO CORRECT
SENTENCE UNDER 28 U.S.C. § 2255**

Before the court is Petitioner's April 13, 2005 "Motion for Relief From Final Judgment . . . Pursuant to Rule 60(b)(6)." Because Petitioner's motion is a successive motion seeking to modify his sentence under 28 U.S.C. § 2255, the court will transfer the motion to the Sixth Circuit Court of Appeals.¹

Although Petitioner characterizes his motion as one brought under Rule 60(b)(6), it should be treated as a second or successive habeas petition "if the factual predicate in support of the motion constitutes a direct challenge to the constitutionality of the underlying conviction." *In Re Abdur Rahman*, 392 F.3d 174, 177 (6th Cir. 2004). Here, Petitioner alleges that the Supreme Court's decision in *United States v. Booker and United States v. Fanfan*, 125 S.Ct. 738 (2005) "resulted in a defective foundation" for Petitioner's sentence. (Pet'r's Mot. at 1.) He claims no defect in the court's decisional process that would be ordinarily addressed under Rule 60(b). *In Re Abdur Rahman*, 392 F.3d at 177.

¹ This court previously denied Petitioner's motion brought pursuant to 28 U.S.C. § 2255 on June 13, 2003 [Dkt. # 127].

Under 28 U.S.C. § 2255, “a second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.” Because the Sixth Circuit Court of Appeals has not issued an order authorizing this court to consider a successive motion to correct Petitioner’s sentence pursuant to 28 U.S.C. §§ 2244(b) & 2255, it will transfer Petitioner’s motion to the Sixth Circuit. Accordingly,

IT IS ORDERED that Petitioner’s April 13, 2005 “Motion for Relief From Final Judgment . . . Pursuant to Rule 60(b)(6)” [Dkt. # 141] shall be TRANSFERRED to the Sixth Circuit Court of Appeals for a determination of whether certification should issue pursuant to 28 U.S.C. § 2244.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 16, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 16, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522